REMARKS

The Office Action dated March 3, 2009 has been received and considered. In this response, claims 1-4, 12, 25, 27, 32, 34, 43, and 46 have been amended. Support for the amendments may be found in the specification and drawings as originally filed. Reconsideration of the outstanding rejections in the present application is respectfully requested based on the following remarks.

Obviousness Rejection of Claims 1-13, 16, 17, 19-22, 26-29, 31-37 and 39-46

At page 2 of the Office Action, claims 1-13, 16, 17, 19-22, 26-29, 31-37 and 39-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Porter et al. (U.S. Patent No. 6,337,947), in view of Nakaya et al. (U.S. Patent App. Pub. No. US 2001/0012436).

Claim 1 has been amended to recite "the editing characteristics based on information selected from the group consisting of a source of the video stream, a station logo, television guide information; and a user action that modified the video stream." Claims 25, 43, and 46 have been amended to recite similar features. The Office acknowledges at pages 3-6 of the Office Action that the features of editing based on a source of the video stream, a station logo, and television guide information are not disclosed by the cited references. Accordingly, the Office takes "Official Notice" that these features were well-known in the art. However, according to MPEP § 2144.03:

> Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))....It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example... specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art [emphasis in original].

Further, "[i]t is **never** appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, **as the principal evidence upon which a rejection was based**." *Id.* (emphasis added). In this case, the Office has provided no evidence that editing a video stream based on a source of the video stream, a station logo, or television guide information was so well-known in the art as to be capable of instant and unquestionable demonstration as being well-known. Moreover, the Office has not provided any evidence that editing based on these characteristics **in real time**, as provided by claim 1, was notoriously well-known in the art. Accordingly, the Office has failed to establish a prima facie case of obviousness with respect to claims 1, 25, 43, and 46.

With respect to the recited feature "editing characteristics based on a user action that modified the video stream", the Office asserts that these features are disclosed by Porter at column 5, lines 4-9. However, the cited portion discloses only that a user can establish a "censoring threshold" for a received video stream. There is no disclosure in Porter that establishment of the censoring threshold **modifies a video stream** in any manner. That is, assuming *arguendo* that establishing a censoring threshold corresponds to a user action, there is no disclosure that the user action modified the video stream, as provided by claim 1. Further, Nayaka does not remedy the deficiencies of Porter. Accordingly, the cited references, individually and in combination, fail to disclose or render obvious the above cited features of claim 1, as well as the similar features recited by claims 25, 43 and 46.

With respect to independent claim 32, the claim recites "editing the video stream based on a source of the video stream." For reasons similar to those set forth above with respect to claim 1, the cited references fail to disclose or render obvious at least these elements of claim 32.

Claims 2-13, 16, 17, and 19-22 depend from claim 1. Claims 26-29 and 31 depend from claim 25. Claims 33-37 and 39-42 depend from claim 32. Claims 44 and 45 depend from claim 43. Accordingly, the cited references fail to disclose or render obvious at least one element of each these dependent claims, at least by virtue of their respective dependence on claims 1, 25, 32, and 43. In addition, these dependent claims recite additional novel elements.

In view of the foregoing, withdrawal of the obviousness rejection of claims 1-13, 16, 17, 19-22, 26-29, 31-37 and 39-46 and reconsideration of the claims is respectfully requested.

Obviousness Rejection of Claims 23, 24 and 38

At page 8 of the Office Action, claims 23, 24 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Porter and Nakaya as further in view of Linnartz et al. (U.S. Patent No. 7,336,712). Claims 23 and 24 depend from claim 1. Claim 38 depends from claim 32. As explained above, Porter and Nakaya fail to disclose or render obvious at least one element of each of claim 1 and 32. In addition, Linnartz fails to remedy the deficiencies of the other cited references. Accordingly, the cited references fail to disclose or render obvious at least one element of each of claims 23, 24, and 38, at least by virtue of their respective dependence on claims 1 and 32. In addition, these dependent claims recite additional novel elements.

In view of the foregoing, withdrawal of the obviousness rejection of claims 23, 24, and 38 and reconsideration of the claims is respectfully requested.

Obviousness Rejection of Claim 30

At page 9 of the Office Action, claim 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Porter and Nakaya in view of Matsui et al. (U.S. Patent App. Pub. No. 2003/0086686). Claim 30 depends from claim 25. Claim 38 depends from claim 32. As explained above, Porter and Nakaya fail to disclose or render obvious at least one element of claim 25. In addition, Matsui fails to remedy the deficiencies of the other cited references. Accordingly, the cited references fail to disclose or render obvious at least one element of claim 30, at least by virtue of its respective dependence on claims 1 and 32. In addition, claim 25 recites additional novel elements.

In view of the foregoing, withdrawal of the obviousness rejection of claim 25 and reconsideration of the claim is respectfully requested.

Conclusion

The Applicants respectfully submit that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number in order to expedite

resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

The Applicants believe no additional fees are due, but if the Commissioner believes additional fees are due, the Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-0441.

Respectfully submitted,

/Adam D. Sheehan/ June 3, 2009

Adam D. Sheehan; Reg. No. 42,146
LARSON NEWMAN ABEL & POLANSKY, LLP
5914 West Courtyard Drive, Suite 200
Austin, Texas 78730
(512) 439-7100 (phone)
(512) 439-7199 (fax)

Date